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PTO/SB/33 (07-06)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 403104-A-01-US (Orbach)	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>John C. Moran</u> Signature <u>03/02/2009</u> Typed or printed name <u>John C. Moran</u>		Application Number 10/810,526	Filed 03/27/2004
		First Named Inventor Julian James Orbach	
		Art Unit 2617	Examiner Doan, Kiet M.
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>30,782</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		<u>John C. Moran</u> Signature <u>John C. Moran</u> Typed or printed name <u>303-450-9926</u> Telephone number <u>03/02/2009</u> Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.			
<input type="checkbox"/> *Total of _____ forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Serial No. 10/652,914

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IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE

Patent Application

Inventor Julian James Orbach

Atty. Docket No. 403104-A-01-US (Orbach)
Serial No. 10/810,526 Group Art Unit 2617
Filing Date 03/27/2004
Examiner Doan, Kiet M.
Title Method and Apparatus For Incoming Call Pause Notification

MAIL STOP AF
COMMISSIONER FOR PATENTS
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

SIR:

Applicant respectfully request that a panel of Examiners formally review the legal and factual basis of the rejections in the Final Office Action mailed 12/02/2008 related to the above-identified patent application. The instant request is being filed with a Notice of Appeal in compliance with 37 §CFR 41.31. Also, the instant request is being filed prior to the filing of an appeal brief.

Applicant respectfully asserts that the above-noted rejections are factually deficient, and requests the application be allowed on the existing claims, or alternatively, that a prosecution on the merits be reopened. If the application is not allowed on the existing claims, then proposed changes which the review panel may have for Applicant which, if accepted, may result in an indication of allowability for the contested claims, would be appreciated.

GROUND OF REJECTION TO BE REVIEWED

The grounds of rejection to be reviewed are whether claims 12-22, 34-44, 56, 57, and 60, are patentable under 35 U.S.C. §102(e) over U.S. Patent Application

I hereby certify that this correspondence is being facsimile transmitted to Commissioner for Patents, at fax No. 571-273-8300, on

03/02/2009
Date Being Faxed

John C. Moran
Signature

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Publication No. 2004/0198461 of D.J. Coombes (hereafter referred to as Coombes).

ARGUMENT

Rejection of Claims 12-22 and 60 under 35 U.S.C. §102(e)

Claim 12 recites in part "answering the incoming call by the wireless handset in response to a predefined amount of movement in a physical location of the wireless handset as detected by the wireless handset when the telecommunication terminal is not engaged in another call with the predefined amount of movement occurring after the incoming call is received by the wireless handset". Claim 12 is very clear that the incoming call is only answer upon a predefined amount of movement occurring after the incoming call is received. Thus, claim 12 is clear that the step of answering is not performed simply because the handset is in a particular location when the incoming call is received. Coombes does not disclose or suggest the answering of an incoming call upon a predefined amount of movement in the physical location of the wireless handset being detected by the wireless handset after the incoming call is received.

The Final Office Action of 12/02/2008 stated "The concepts of 'answering the incoming call by the wireless handset in response to a predefined amount of movement in a physical location of the wireless handset as detected by the wireless handset when the telecommunication terminal is not engaged in another call with the predefined amount of movement occurring after the incoming call is received by the wireless handset'. Croombes is clearly teach the concepts of receiving/detected the incoming call when the mobile handset of the user that located in a inconvenient or inappropriate location to answer, that is, after receiving the incoming call at a physical location (meeting place, church, theater) the mobile handset automatic answer the call wherein transmit a pre-recording greeting message including the amount of waiting time or some other appropriate phrase that the user desires see paragraphs [0008], [0011-0012], [0016], Fig. 2 illustrate and describe)". Although the Final Office Action claims that the "with the predefined amount of movement occurring after the incoming call is received by the wireless set" is disclosed in the opening sentence of the statement, the second sentence of the statement gives no basis for this assertion nor even claims that such an assertion can be made. The second statement merely sets forth the idea that a pre-recorded message will be sent if the mobile handset of the user is located in an inconvenient or in the appropriate location to answer the incoming call. There is no

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discussion that a predefined amount of movement occurs after receipt of the incoming call in the second statement. Nor, do the paragraphs cited by the Final Office Action disclose the predefined amount of movement occurring after receipt of the incoming call.

Applicant respectfully submits that claim 12 is patentable under 35 U.S.C. §102(e) in view of the cited art. Dependent claims 13-22 and 60 are directly or indirectly dependent on claim 12 and are patentable for at least the same reasons as set forth with respect to claim 12.

Rejection of Claims 34-44, 56, and 57 under 35 U.S.C. §102(e)

Applicant respectfully submits that claims 34-44 are patentable under 35 U.S.C. §102 (e) for the same reasons as claims 12-22.

Further, applicant respectfully submits that claims 56 and 57 are patentable under 35 U.S.C. §102 (e) for the same reasons as claims 12 and 19.

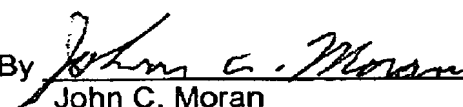
Summary

For the foregoing reasons, applicant respectfully request that the present application be allowed, or alternatively, that prosecution on the merits be reopened.

Respectfully,

Julian James Orbach

By


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Date: 03/02/2009

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